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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GLORIA JACQUEZ, individually and as co-
successor-in-interest to Decedent RICHARD
JACQUEZ, R.J. by and through his Guardian Ad
Litem Monica Mendoza, individually and as co-
successor-in-interest to Decedent RICHARD
JACQUEZ,

Plaintiffs,

vs.

CITY OF SAN JOSE, a municipal corporation;
JACOB MORRIS, individually and in his
capacity as an officer for the San Jose Police
Department; and DOES 1-50, inclusive,

Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES
(42 U.S.C §§ 1983, 1988; and pendent tort
claims)

JURY TRIAL DEMANDED

INTRODUCTION

1. On August 17, 2015, Decedent RICHARD JACQUEZ, an unarmed man, was shot to death by Officer Jacob Morris of the San Jose Police Department while he had his back turned to Officer Morris and posed no threat of harm to anyone at the time that he was shot.

2. This civil rights and wrongful death action seeks compensatory and punitive damages from Defendants for violating the Fourth and Fourteenth Amendment under the United States Constitution and state law in connection with the death of Decedent RICHARD JACQUEZ, who died as a result of the unlawful and/or negligent use of force by the City of San Jose Police Department.

3. This action seeks to recover damages for the violation of rights personal to Decedent and the rights of his surviving successors-in-interest.

JURISDICTION

4. This action arises under Title 42 of the United States Code, Section 1983. Jurisdiction is conferred upon this Court by Title 42 of the United States Code, Section 1331 and 1343 and 42 U.S.C. Section 12188(a). This Court also has supplemental jurisdiction over Plaintiffs' state law causes of action under 28 U.S.C. Section 1367.

PARTIES

5. Decedent RICHARD JACQUEZ was an individual residing in the State of California. Decedent was unmarried at the time of his death and died intestate.

6. Plaintiff GLORIA JACQUEZ ("Jacquez") is and was at all times herein mentioned the mother of Decedent RICHARD JACQUEZ and is a co-successor-in-interest to Decedent RICHARD JACQUEZ.

7. Plaintiff R.J. ("R.J."), is and was at all times herein mentioned the biological son of Decedent RICHARD JACQUEZ. R.J. sues in his individual capacity and as a co-successor-in-interest to Decedent by and through his Guardian Ad Litem, MONICA MENDOZA.

8. CITY OF SAN JOSE ("City") is an incorporated public entity duly authorized and existing as such in and under the laws of the State of California; and at all times herein mentioned, Defendant City has possessed the power and authority to adopt policies and prescribe rules,

1 regulations and practices affecting the operation of the City of San Jose's Police Department and its
2 tactics, methods, practices, customs and usage. At all relevant times, Defendant City was the
3 employer of JACOB MORRIS, and DOES Defendants, individually and as a peace officers.

4 9. Defendant JACOB MORRIS ("Morris"), was an officer for the City of San Jose Police
5 Department, and is sued individually and in his official capacity.

6 10. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through
7 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs are informed
8 and believe and thereon allege that each defendant so named is responsible in some manner for the
9 injuries and damages sustained by Plaintiffs as set forth herein. Plaintiffs will amend this Complaint
10 to state the names and capacities of DOES 1-50, inclusive, when they have been ascertained.

11 **ADMINISTRATIVE PREREQUISITES**

12 11. Plaintiffs are required to comply with an administrative tort claim requirement under
13 California law. Plaintiffs have exhausted all administrative remedies pursuant to California
14 Government Code Section 910. Plaintiffs filed a claim against the City of San Jose on February 15,
15 2016. The claim was rejected by the City of San Jose on March 18, 2016.

16 **FACTUAL ALLEGATIONS**

17 12. On August 17, 2015 at approximately 7:00 p.m. at or near the intersection of 37
18 Kirkhaven Court and Stoneyhaven Way in San Jose, CA. Decedent, RICHARD JACQUEZ, was
19 pursued by Defendant Officer Morris of the San Jose Police Department.

20 13. Decedent RICHARD JACQUEZ stopped his car. At that point, Decedent exited his
21 car and ran towards a relative's house. At the time, Decedent was unarmed. Further, Decedent
22 RICHARD JACQUEZ's hands were clearly visible above head level as he ran towards his relative's
23 house. As Decedent RICHARD JACQUEZ was running, his back was turned towards Defendant
24 Officer Morris. Inexplicably, without legal cause, Defendant Officer Morris shot Decedent
25 RICHARD JACQUEZ multiple times, striking him in the back and chest. Decedent RICHARD
26 JACQUEZ died as a consequence of the gunshot wounds.

27 14. Plaintiffs allege that each Defendants were reasonably on notice that Decedent
28 RICHARD JACQUEZ was unarmed and posed no threat of harm to anyone at the time that he was

1 shot to death. Plaintiffs further allege that a reasonable officer in Defendant Officer Morris' position
2 would have clearly been on notice that Decedent RICHARD JACQUEZ was unarmed and did not
3 pose a threat of harm to anyone at the time that he was shot while running in the opposite direction of
4 the officer while his hands were in the air.

5 15. The actions and omissions of City and the Defendant San Jose Police Department
6 Officers were objectively unreasonable under the circumstances, without legal justification or other
7 legal right, done under color of law, within the course and scope of their employment as law
8 enforcement officers and/or public officials, and pursuant to unconstitutional customs, policies and
9 procedures of City and/or other jurisdictions. City was also responsible for Plaintiffs' injuries
10 through its own acts and omissions, negligent and otherwise, by failing to properly and adequately
11 investigate, train, supervise, monitor, instruct, and discipline its law enforcement officers and/or
12 employees and agents, including the officers and officials described herein.

13 16. Plaintiffs allege that Decedent RICHARD JACQUEZ's death was the result of
14 excessive force used by Defendants.

15 17. Plaintiffs further allege that Decedent RICHARD JACQUEZ's death was the
16 proximate result of Defendant City's failure to reasonably train their law enforcement officers in the
17 proper and reasonable use of force and the making of investigations. Plaintiff further alleges that
18 these substantial failures reflect Defendant City's policies implicitly ratifying and/or authorizing the
19 use of excessive force by its police officers and the failure to reasonably train police officers
20 employed by Defendant City in the making of investigations.

21 18. The killing of Decedent RICHARD JACQUEZ described herein was brutal,
22 malicious, and done without just provocation or cause, proximately causing Plaintiffs' injuries and
23 resulting damages.

24 **DAMAGES**

25 19. Plaintiffs were physically, mentally, emotionally and financially injured and damaged
26 as a proximate result of Decedent RICHARD JACQUEZ's wrongful death, including, but not
27 limited to, the loss of decedent's familial relationships, comfort, protection, companionship, love,
28 affection, solace, and moral support. In addition to these damages, Plaintiffs are entitled to recover

for the reasonable value of funeral and burial expenses, pursuant to C.C.P. Sections 377.60 and 377.61.

20. Plaintiffs are entitled to recover wrongful death damages pursuant to C.C.P. Sections 377.60 and 377.61 and Probate Code Section 6402(b).

21. Pursuant to C.C.P. Sections 377.30, 377.32, and 377.34, Plaintiffs are further entitled to recover for damages incurred by decedent for deprivation without due process of decedent's right to life, and to any penalties or punitive damages to which decedent would have been entitled to recover, had he lived. For Plaintiffs' Federal claims only, these damages include damages also incurred by decedent consisting of pain, suffering, and disfigurement prior to decedent's death.

22. As a further direct and proximate result of the negligence, excessive force and deliberate indifference of defendants, and each of them, Plaintiffs have been deprived of Decedent RICHARD JACQUEZ's financial support.

23. The conduct of the individual defendants was malicious, wanton, and oppressive. Plaintiffs, as decedent's successor-in-interest, are therefore entitled to an award of punitive damages against said individual defendants.

24. Plaintiffs found it necessary to engage the services of private counsel to vindicate their rights, and the rights of decedent, under the law. Plaintiffs are therefore entitled to recover all attorneys' fees incurred in relation to this action pursuant to Title 42 United States Code section 1988, and California Civil Code sections 52 and 52.1.

FIRST CAUSE OF ACTION

(Violation of the Fourth Amendment of the United States Constitution)

(42 U.S.C. § 1983- Survival Action)

(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica Mendoza against Defendants Morris and DOES 1-25)

25. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 24 of this Complaint.

26. Defendants' above-described conduct constituted violations of decedent's rights as provided for under the Fourth Amendment to the United States Constitution. These rights include but

1 are not limited to the right to be free from excessive force and/or the arbitrary and/or unreasonable
2 use of force against them.

3 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

4 **SECOND CAUSE OF ACTION**

5 **(Violations of Plaintiff's 14th Amendment Rights/ Right to Familial Relationship)**
6 **(42 U.S.C. § 1983)**

7 **(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica**
8 **Mendoza against Defendants Morris and DOES 1-25)**

9 27. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26 of this
10 Complaint.

11 28. Defendants' conduct constituted acts under color of state law, and without due process
12 of law, which deprived Plaintiffs of their right to a familial relationship. Defendants deprived
13 Plaintiffs of these rights by use of unreasonable, unjustified and deadly use of force, causing injuries,
14 which resulted in decedent's death.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **THIRD CAUSE OF ACTION**

17 **(Monell - 42 U.S.C. § 1983)**

18 **(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica Mendoza**
19 **against Defendants City, Morris, and DOES 1-50)**

20 29. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 28 of this
21 Complaint.

22 30. Plaintiffs are informed and believe and thereon alleges that high-ranking City officials,
23 including high-ranking police supervisors such as DOES 26 through 50, and/or each of them, knew
24 and/or reasonably should have known about systemic, unwarranted uses of force by DOES 1-25,
25 and/or the San Jose Police Department.

26 31. Despite having such notice, Plaintiffs are informed and believe and thereon allege that
27 Defendant DOES 26-50, and/or each of them, approved, ratified, condoned, encouraged, sought to
28 cover up, and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil
rights violations by said police officers.

32. Plaintiffs are further informed and believes and thereon alleges that as a result of the deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants MORRIS and DOES 1-25 and/or each of them, the City of San Jose Police Department encouraged these officers to continue their course of misconduct and ignored these officers' lack of training, resulting in the violation of the Plaintiffs' rights as alleged herein.

33. Plaintiffs further allege that Defendant DOES 26-50, and/or each of them, were on notice of the Constitutional defects in their training of City police officers, including, but not limited to unlawful arrests and detentions not based on probable cause.

34. The aforementioned acts and/or omissions and/or deliberate indifference by high ranking City officials, including high ranking City Police Department supervisors DOES 26-50, Defendant MORRIS and DOES 1-25, and each of them resulted in the deprivation of Plaintiffs' constitutional rights including, but not limited to the right to be free from unreasonable searches and seizures, as guaranteed by the Fourth Amendment to the United States Constitution, the right to not be deprived of life, liberty or property without due process of the law, as guaranteed by the Fourteenth Amendment to the United States Constitution and the right to be free from excessive force by police officers, as guaranteed by the Fourth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Wrongful Death - Negligence)

(C.C.P. §§ 377.60 and 377.61)

(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica Mendoza against Defendants Morris and DOES 1-25)

35. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 34 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

36. Defendant City, by and through its agents and employees, the involved Defendant Officers' negligent actions and/or negligent failure to act, as set forth herein-above proximately caused the death of decedent RICHARD JACQUEZ.

1 37. As an actual and proximate result of said defendants' negligence, and the death of
2 decedent, plaintiffs have sustained pecuniary loss resulting from the loss of comfort, society,
3 consortium, attention, services, and support of her husband, decedent, in an amount according to
4 proof at trial.

5 38. As a further actual and proximate result of said defendant's negligence, plaintiffs have
6 incurred funeral and burial expenses, in an amount according to proof at trial.

7 39. Pursuant to California C.C.P. Sections 377.60 and 377.61, plaintiffs have brought this
8 action, and claims damages from said defendants for the wrongful death of decedent, and the
9 resulting injuries and damages.

10 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

11
12 **FIFTH CAUSE OF ACTION**
 (Violation of CALIFORNIA CIVIL CODE §52.1)

13 **(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica Mendoza**
14 **against Defendants Morris and DOES 1-25)**

15 40. Plaintiffs re-allege and incorporates by reference paragraphs 1 through 39 of this
16 Complaint.

17 41. Defendants' above-described conduct constituted interference, and attempted
18 interference, by threats, intimidation and coercion, with the Decedent RICHARD JACQUEZ's
19 peaceable exercise and enjoyment of rights secured by the Constitution and laws of the United States
20 and the State of California, in violation of California Civil Code §52.1.

21 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

22 **SIXTH CAUSE OF ACTION**
 (Negligence)

23 **(Plaintiffs Jacquez and R.J., by and through his Guardian Ad Litem Monica**
24 **Mendoza against Defendants Morris and DOES 1-50)**

25 42. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 41 of this
26 Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton,
27 and oppressive conduct by defendants, and any and all allegations requesting punitive damages.
28

1 For cost of suit herein incurred; and

2 4. For such other and further relief as the Court deems just and proper.

3
4 **LAW OFFICES OF JOHN L. BURRIS**

5 Dated: September 16, 2016

/s/ John L. Burris
John L. Burris, Esq.,
Attorney for Plaintiffs

7 Dated: September 16, 2016

/s/ Ben Nisenbaum
Ben Nisenbaum, Esq.
Attorney for Plaintiffs

10 Dated: September 16, 2016

/s/ James A. Cook
James A. Cook, Esq.
Attorney for Plaintiffs